

§ 290.10 Is an Indian tribe in violation of IGRA if it makes per capita payments to its members from net gaming revenues without an approved tribal revenue allocation plan?

Yes, you are in violation of IGRA if you make per capita payments to your tribal members from net gaming revenues without an approved tribal revenue allocation plan. If you refuse to comply, the DOJ or NIGC may enforce the per capita requirements of IGRA.

§ 290.11 May an Indian tribe distribute per capita payments from net gaming revenues derived from either Class II or Class III gaming without a tribal revenue allocation plan?

No, IGRA requires that you have an approved tribal revenue allocation plan.

§ 290.12 What information must the tribal revenue allocation plan contain?

(a) You must prepare a tribal revenue allocation plan that includes a percentage breakdown of the uses for which you will allocate net gaming revenues. The percentage breakdown must total 100 percent.

(b) The tribal revenue allocation plan must meet the following criteria:

(1) It must reserve an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes:

- (i) To fund tribal government operations or programs;
- (ii) To provide for the general welfare of the tribe or its members;
- (iii) To promote tribal economic development;
- (iv) To donate to charitable organizations; or
- (v) To help fund operations of local government.

(2) It must contain detailed information to allow the ABO to determine that it complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development.

(3) It must protect and preserve the interests of minors and other legally incompetent persons who are entitled to receive per capita payments by:

- (i) Ensuring that tribes make per capita payments for eligible minors or

incompetents to the parents or legal guardians of these minors or incompetents at times and in such amounts as necessary for the health, education, or welfare of the minor or incompetent;

(ii) Establishing criteria for withdrawal of the funds, acceptable proof and/or receipts for accountability of the expenditure of the funds and the circumstances for denial of the withdrawal of the minors' and legal incompetents' per capita payments by the parent or legal guardian; and

(iii) Establishing a process, system, or forum for dispute resolution.

(4) It must describe how you will notify members of the tax liability for per capita payments and how you will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR part 31.

(5) It must authorize the distribution of per capita payments to members according to specific eligibility requirements and must utilize or establish a tribal court system, forum or administrative process for resolution of disputes concerning the allocation of net gaming revenues and the distribution of per capita payments.

§ 290.13 Under what conditions may an Indian tribe distribute per capita payments?

You may make per capita payments only after the ABO approves your tribal revenue allocation plan.

§ 290.14 Who can share in a per capita payment?

(a) You must establish your own criteria for determining whether all members or identified groups of members are eligible for per capita payments.

(b) If the tribal revenue allocation plan calls for distributing per capita payments to an identified group of members rather than to all members, you must justify limiting this payment to the identified group of members. You must make sure that:

(1) The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary;

(2) The distinction does not discriminate or otherwise violate the Indian Civil Rights Act; and